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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1931

No. 84

W. L. MATHEWS ET AL., APPELLANTS,

vs.

J. F. RODGERS ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF MISSISSIPPI

FILED MAY 15, 1931

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 29, 1931

[fol. 1]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DELTA DIVISION OF THE NORTHERN DISTRICT OF MISSISSIPPI

J. F. RODGERS et al.

vs.

W. L. MATTHEWS et al.

BILL OF COMPLAINT—Filed Sept. 20, 1930

To the Honorable Allen Cox, Judge of the Court aforesaid:

Plaintiffs, as grounds for relief in this court, state the facts following, to-wit:

I

The names and residences of the several plaintiffs are as follows, to-wit:

J. F. Rodgers, doing business under the style and firm name of J. F. Rodgers & Company; A. C. Metts, doing business under the style and firm name of A. C. Metts & Company; C. W. Connell and W. C. Connell, a co-partnership, doing business under the style and firm name of Connell Brothers; H. J. Murff, doing business under the style and firm name of H. J. Murff & Company; S. W. Haaga; H. L. Turpin, doing business under the style and firm name of H. L. Turpin & Company; E. P. Eskridge, doing business under the style and firm name of E. P. Eskridge Company; Max Sansing, doing business under the style and firm name of Sansing & Binder; B. F. Oliver, doing business under the style and firm name of B. F. Oliver [fol. 2] & Company; Lamar Sellers, doing business under the style and firm name of Lamar Sellers & Company; H. S. Moore, doing business under the style and firm name of H. S. Moore & Company; all citizens and residents of the City of Clarksdale, Coahoma County, Mississippi and the Delta Division of the Northern District of Mississippi; and B. O. McGee, R. W. McGee, and B. S. Milam, a co-partnership doing business under the style and firm name

of McGee, Dean & Company, citizens and residents of the City of Leland, Washington County, Mississippi, and in the Southern District of said State; Fisher Cotton Company, a corporation existing under the Laws of the State of Mississippi, domiciled at and a citizen of the City of Greenville, said Washington County, Mississippi; S. B. Wilson, doing business under the style and firm name of S. B. Wilson & Company, a citizen and resident of the City of Memphis and the State of Tennessee; and Cooper & Brush-Newberger Cotton Company, a corporation organized and existing under and by virtue of the Laws of the State of Delaware, and a citizen and resident of said state. All said plaintiffs are engaged in the business of buying, selling, and shipping cotton, as hereinafter particularly alleged, in the State of Mississippi, and said plaintiffs allege that the question herein presented in one of general and common interest to the cotton buyers, sellers, and shippers doing business in the Mississippi Delta hereinafter delineated, who constitute a class so numerous that it is impracticable for all of them to be joined as plaintiffs herein, and, there-
[fol. 3] fore, plaintiffs sue herein for themselves and all others in like situation, members of said class who may come in under the terms of the decree hereinafter prayed, upon such terms as may be fixed by said decree.

The full names so far as known to plaintiffs, and the citizenship and residence of the defendants are as follows, to-wit:

W. L. Matthews, Sheriff and ex-officio Tax Collector of Coahoma County, Mississippi, a citizen and resident of said Coahoma County, Mississippi; Lester C. Franklin, a citizen and resident of Coahoma County, Mississippi; H. H. Casteel, a citizen and resident of Madison County, Mississippi, in the Southern District of said State; and Webb Walley, a citizen and resident of Hinds County, Mississippi, in the Southern District of said State; the three last mentioned defendants being the members of the Board of State Tax Commissioners of the State of Mississippi.

II

The jurisdiction of this court depends upon the fact that the matter in controversy herein, exclusive of interest and costs, exceeds the value of Three Thousand ($3,000.00)

Dollars, and arises under the Constitution of the United States in that plaintiffs herein assert the right to engage in carrying on business in interstate and foreign commerce free from molestation and the burdens hereinafter set forth, [fol. 4] placed thereon by defendants herein, and on the further fact that the defendants are undertaking, as hereinafter alleged, to deprive plaintiffs of such right so to engage in interstate and foreign commerce, and to deprive plaintiffs of the right to earn their livelihoods by engaging in such interstate and foreign commerce, which right is of the value of more than Three Thousand ($3,000.00) Dollars as hereinafter alleged, and, therefore, jurisdicition is vested in this court under and by virtue of the terms and provisions of Section 41 (1) of Title 28, U. S. C. A.

The jurisdiction of this court further depends upon the fact that this is a suit in equity authorized by law to be brought by the plaintiffs to redress the deprivation of the right of the plaintiffs, as aforesaid, to engage in interstate and foreign commerce, of which the defendants herein are undertaking to deprive the plaintiffs under color of certain statutes of the State of Mississippi hereinafter referred to, which right so to engage in interstate and foreign commerce is secured to the plaintiffs by Article 1, Section 3 and Article 14, Section 1 of the Amendments to the Constitution of the United States, and, therefore, jurisdiction is vested in this court under the provisions of Section 41 (14) of Title 28, U. S. C. A.

[fol. 5]

III

Plaintiffs are, and have been, as hereinabove and hereinafter alleged, engaged in the business of what is commonly known as cotton buyers and shippers. The plaintiffs herein are all actively engaged in purchasing, selling, and shipping cotton upon the market for cotton, as hereinafter set forth, which is now and has been for many years in the past maintained in the City Clarksdale, Mississippi. They are likewise engaged in buying, selling, and shipping cotton upon the other markets maintained in the Mississippi Delta, hereinafter mentioned and described, at Greenwood, Mississippi; Cleveland, Mississippi; Indianola, Mississippi; Greenville, Mississippi; Yazoo City, Mississippi; Belzoni, Mississippi; and Vicksburg, Missis-

sippi; and plaintiffs allege that the conditions hereinafter stated as appertaining particularly to the cotton market maintained in Clarksdale, Mississippi, likewise appertain, in all essential features, to the other markets herein mentioned, and conditions described herein with reference to the said market at Clarksdale, Mississippi, are illustrative of the general condition in the cotton business at all of said markets.

IV

The Mississippi Delta, an alluvial body of land located within the confines of the State of Mississippi, comprises [fol. 6] about six thousand six hundred fifty square miles; it is bounded on the north by the northern boundary of the State, and extends along the western boundary of said state, in a southerly direction, for approximately one hundred ninety miles, the western boundary thereof being the Mississippi River. Its width varies from a few yards to approximately fifty miles. The said Mississippi Delta was formed by the action of the Mississippi River in overflowing the same, and gradually building it up to a height at which it became susceptible of cultivation. The character of the soil in said Mississippi Delta makes it peculiarly adaptable to the growing of what is commonly known as Delta-type, long staple cotton, which is a cotton, and a peculiar type of cotton, recognized throughout the world in the cotton trade as being of a superior type, character, and strength.

Clarksdale, Mississippi, is located in the heart of said Mississippi Delta about seventy miles south of the northern boundary line of said State, and about fifteen miles east of the Mississippi River. The said Mississippi Delta is exclusively an agricultural community, and its principal crop is that of said long staple cotton. It produces annually a crop of approximately seven hundred thousand bales, and said cotton is the only product which is raised by the agriculturists located in said Mississippi Delta, and which is sold upon the open market, and is the source [fol. 7] from which is produced the cash revenue out of which practically the entire populace of said Mississippi Delta derives its livelihood.

The said cotton, when it ripens in the field, is picked by hand, put through a ginnery, by the process of which

machine the lint is removed from the seed, and the lint cotton (in which plaintiffs deal exclusively as hereinafter alleged) is wrapped and tied into bales weighing approximately five hundred pounds each. A bale of cotton, when wrapped and tied at the gin, is approximately five feet in length, three and one-half feet in width, and four and one-fourth feet in height.

By general and uniform custom, bales of cotton from the gin are transported by rail or otherwise, as hereinafter described, to compresses. A compress is a combination storage warehouse and plant equipped with machinery designed to press bales of cotton, under extremely high pressure, for the purpose of reducing its size. A bale, after compression, is only about eighteen inches thick, the purpose of compression being that the railroads and carriers by water in interstate and foreign commerce, as hereinafter described, are enabled thereby to load into cars and ships, for such carriage, approximately three times as much cotton after compression as otherwise would be possible. Approximately twenty-five per cent [fol. 8] of the cotton which is brought and sold upon said market in Clarksdale, hereinafter mentioned, is transported to the compresses hereinafter described by automobile, truck, or wagon, and delivered by that means to said compresses. Approximately seventy-five per cent of said cotton is transported to said compresses by rail over the lines of the Yazoo & Mississippi Valley Railroad Company, a common carrier engaged in interstate commerce, and which is the only such common carrier doing business at said market.

At Clarksdale, there are two compresses owned and operated by a corporation existing under the Laws of the State of Delaware, to-wit: The Federal Compress & Warehouse Company. Said Federal Compress and Warehouse Company has, with reference to both and each of said compresses maintained at Clarksdale, complied with all the terms and provisions of an act of Congress, the short title of which is the "United States Warehouse Act", being Chapter 10, Title 7, U. S. C. A. The said Federal Compress and Warehouse Company complied with the terms and provisions of the said "United States Warehouse Act" for the reason that all of said cotton stored in the said compresses and/or warehouses at Clarksdale, Mississippi,

and handled in the manner above described was and is cotton stored and handled therein for interstate and/or foreign commerce, and the power of Congress to affect, by provisions of its said act, the said cotton so handled and stored [fol. 9] arises only from the fact, as hereinbefore and hereinafter alleged, that said cotton and all of it is stored and handled for interstate and foreign commerce, and Congress, in exercising the power granted it by said Article 1, Section 3, of the Constitution of the United States, over the said cotton, has thereby reserved to itself exclusive jurisdiction, power, and control thereof, and divested the State of Mississippi of any power, if any it might have had, to control and/or regulate the buying, selling, and/or shipping of said cotton.

When cotton is delivered to said compresses, the said Federal Compress & Warehouse Company issues to the owner thereof warehouse receipts, which receipts comply in all things with the terms and provisions of said Act of Congress. Said cotton is universally sold upon the market by transfer and delivery of said warehouse receipts in accordance with the terms of said Act of Congress, and actual samples taken from said bales of cotton; said warehouse receipts being the evidence of the ownership of such cotton.

At Clarksdale, there exists an active market for the purchase and sale of said cotton between farmers raising said cotton and plaintiffs and others engaged in like business, who are purchasing the same with the intention and purpose, as hereinafter alleged, of selling and transporting same in interstate and foreign commerce, which is and was and has been a universal custom and course of business for more than twenty years past. The price at which said [fol. 10] cotton is sold upon said market at Clarksdale, however, is determined by the value of such cotton upon certain cotton exchanges maintained, respectively, in the Cities of New Orleans, Louisiana, Chicago, Illinois, and New York, New York; and there are maintained, in the City of Clarksdale, Mississippi, offices of brokers who receive daily by wire, for periods of approximately five hours each day, continuous quotations from such exchanges which fix and determine the price at which cotton is sold upon said Clarksdale market. All of said cotton, however, is bought, as hereinafter alleged, by plaintiffs with the uniform pur-

pose and intention (which is and has been the universal course of business) to transport the same in interstate and foreign commerce to the mills located in the states upon the Atlantic seaboard, to-wit: Georgia, South Carolina, North Carolina, and Tennessee; and the mills of the New England States, to-wit: Massachusetts, Rhode Island, and Connecticut; and the mills of foreign countries. None of said cotton is spun or utilized within the confines of the State of Mississippi, or sold to or purchased by any consumer within the confines of the State of Mississippi.

As aforesaid, approximately seventy-five per cent of said cotton is delivered by rail to said compresses at Clarksdale, and plaintiffs allege that, upon the delivery of such cotton to the said carrier by rail at points outlying [fol. 11] said City of Clarksdale, said cotton thereupon is placed in and thereafter remains in the channels of interstate commerce. Plaintiffs, in this connection, allege that the said carrier transports, by rail as aforesaid, the said cotton to the said compress at Clarksdale, and it is there concentrated merely for the purpose of compression and for the purpose of awaiting the determination of its final point of destination outside the State of Mississippi. When the destination of such cotton is determined, the said carrier loads the same out on instructions of the then owner, after having the said cotton compressed, and charges the through freight-rate from the point of origin to the point of destination outside of the State of Mississippi, instead of charging the combined rate for carriage in intrastate commerce from the point of origin to Clarksdale, plus the charge for carriage in interstate commerce from Clarksdale to the point of destination. As for instance: the rate for the carriage in intrastate commerce from Sumner, Mississippi, to Clarksdale, Mississippi, a distance of approximately twenty miles, of an uncompressed bale of cotton is $1.28 per hundred pounds. The through rate for the carriage of a compressed bale of cotton from Clarksdale, Mississippi, to Fall River, Massachusetts, is $1.28 per hundred pounds. The said carrier, instead of charging the combined rate above outlined for carriage from Sumner, Mississippi, to Fall River, Massachusetts, charges the through-rate, which is the intermediate rate, as if there had been no interruption of shipment from Sumner, Mis- [fol. 12] sissippi, to Fall River, Massachusetts. The said

charges are made by said carriers in accordance with the regulations prescribed by the Interstate Commerce Commission in pursuance of the act of Congress creating said commission and the several amendments thereto.

So, therefore, plaintiffs allege that seventy-five per cent of said cotton is actually in the channels of interstate commerce at the time of the original purchase by plaintiffs of the same.

Plaintiffs allege that the general and uniform custom and course of business in handling said cotton upon said market is had and done in the following manner:

The farmer causes warehouse receipts, when the cotton is delivered to the compress, to be issued and delivered either directly to himself or his agent, commonly called a cotton factor. Upon the Clarksdale market, there are approximately twenty-five buyers and shippers who are engaged in the sole business of buying, selling, and shipping cotton in interstate and foreign commerce. The farmer or the factor causes the actual bales of cotton to be sampled, and the cotton is sold to the plaintiffs and other buyers, sellers, and shippers upon said market, upon the basis disclosed by the character of the samples of said cotton, and by endorsement and delivery of the said cotton receipts evidencing the ownership of the same, the price therefor being governed, as aforesaid, by the markets in New York, [fol. 13] Chicago, and New Orleans, as aforementioned. It is uniformly known and understood by the farmer, cotton factor, and the buyer that the buyer is purchasing said cotton solely for the purpose of causing the same to be transported by rail and/or water to said points in the United States and foreign countries where mills convert said cotton into textile products as aforesaid. No cotton that is bought and/or sold upon the Clarksdale market is utilized in the State of Mississippi, but all of said cotton, as aforesaid, is transported for consumption in interstate and foreign commerce.

The general and uniform custom among buyers, shipper, and sellers, as well as the general course of business is that a buyer enters into a contract for either the future or immediate delivery of a certain number of bales of cotton of a certain class, grade, and staple, obligating himself by such contract to deliver to a mill in a foreign state or country such cotton at a given price. Thereupon, such buyer will

go upon the said market at Clarksdale, and purchase cotton of the kind and character which he is obligated to his customer to deliver, and will cause the delivery of said cotton in interstate and/or foreign commerce in accordance with the terms of his contract. A very small proportion of the cotton purchased by shippers, and cotton buyers (not exceeding ten per cent) is bought when no contract for the sale thereof [fol. 14] exists as hereinabove alleged, but, in such cases, it is bought with the sole anticipation and intention on the part of the buyer (which intention is fully known both to the buyer, farmer, and/or factor) to procure a sale of said cotton to some foreign cotton mill or foreign cotton merchant, and to cause the same to be transported in interstate and/or foreign commerce, as aforesaid, at such time as market conditions will justify. Plaintiffs have engaged in the business of buying and selling cotton in the manner aforesaid upon the markets hereinabove described for periods ranging from five to more than twenty years. The business of plaintiffs is commonly known as that either of a cotton buyer, cotton shipper, or words of like import.

In order to acquire a successful business as a cotton buyer, one is first required to spend from three to five years, practically without compensation, in perfecting himself in the knowledge of the various classes, grades, and staples of cotton; likewise, in order to acquire a successful business as a cotton buyer, it is necessary for one to establish what is commonly known in the trade as connections in the various terminal markets where cotton is converted into textile products as aforesaid. These connections refer to customers, that is, either mills or cotton merchants in foreign terminal markets who habitually do business with a given buyer or shipper. It is a matter of extreme difficulty for one to establish such connections, and an established [fol. 15] business as a cotton buyer is measured, as to value, by the amount of cotton which such buyer is able to sell through the connections which he has established by his attention to his business. Plaintiff- are each and all established cotton buyers and shippers engaged in the said business, have established outlets and connections for the ultimate sale and consumption of cotton purchased by them upon the market aforesaid. The business of each individual plaintiff herein necessarily varies, but plaintiffs allege that

the annual business of the plaintiffs herein range from five thousand bales to twenty-five thousand bales each. A reasonable profit for a cotton buyer, in buying and reselling a bale of cotton upon said market in the manner aforeaid, is not less than Two and 50/100 ($2.50) Dollars per bale. Plaintiffs allege that the business of each of them, and the right of each of them to engage in such business free from the burdens and interference hereinafter alleged is vastly in excess of Three Thousand ($3,000.00) Dollars.

V

The State of Mississippi, by an act of its Legislature, Chapter 88 of the Laws of 1930, has undertaken to impose upon the right of the plaintiffs to engage in their said businesses, the necessity on the parts of the plaintiffs of applying in writing to the defendant W. L. Matthews, the [fol. 16] Sheriff and ex-officio Tax Collector of Coahoma County, Mississippi, for a privilege license to engage therein; and has undertaken to likewise require of said plaintiffs the payment by them and each of them of the sum of One Hundred ($100.00) Dollars annually as a privilege or occupation tax upon said business. By the terms of the statute aforesaid, the application in writing by plaintiffs for said license and the payment of said license or occupation tax is made a condition precedent to the right of the plaintiffs to engage in said business. It is further provided by said law that, should plaintiffs engage in said business without having paid said tax and/or without having procured the license aforesaid, plaintiffs and each of them may, upon prosecution and conviction therefor, be punished by a fine of not more than Five Hundred ($500.00) Dollars and/or imprisonment in the county jail for not exceeding six months, which fine and/or imprisonment is in addition to the damages and penalties imposed by said act as hereinafter alleged. It is further provided by said statute that, in the event of the failure of the plaintiffs or any of them *yo* pay the said tax and procure the said license on or before October 1st, 1930, a penalty of double the amount of said tax, to-wit: the sum of Two Hundred ($200.00) Dollars is imposed by said law because of such failure; and it is further provided that the failure to make application in writing for said license is made a [fol. 17] misdemeanor by said law, and is punishable by

a fine of not exceeding Five Hundred ($500.00) Dollars and/or imprisonment of not exceeding six months. Likewise, it is provided that plaintiffs and each of them, in addition to the above stated requirement upon them, as individuals and/or corporations, to make application for and pay the said license or occupation tax, shall pay a privilege tax of Twenty-five ($25.00) Dollars on or before October 1st, 1930, for each employee engaged in their business as buyer or seller of cotton.

Plaintiffs allege that the said provisions of said law and each of them constitute a burden upon interstate commerce, and an unlawful and unconstitutional burden upon the right of the plaintiffs to engage in such interstate and foreign commerce, and to pursue their occupations, as aforesaid, and that the several terms and provisions of the said statute aforesaid are repugnant to said Article 1, Clause 1 of the Constitution of the United States, commonly known as the "Commerce Clause" thereof.

Plaintiffs further show that the defendant W. L. Matthews, Sheriff and ex-officio Tax Collector, as aforesaid, is charged by law with the duty of collecting, enforcing the collection of the said tax and the said penalties, and of prosecuting persons, and especially the plaintiffs, who fail [fol. 18] to comply with the terms and provisions of the said act; that, by the terms and provisions of Chapter 238 of the said Laws of 1930, the defendants Lester C. Franklin, H. H. Casteel, and Webb Walley, constituting the members of the State Board of Tax Commissioners of the State of Mississippi are likewise charged with the duty of enforcing all of the terms and provisions of the said Chapter 56 of the said Laws of 1930; that the said defendants and each of them are now threatening the said plaintiffs and each of them with the institution of suits to enforce the payment of the said unlawful tax and the said enormous penalties, and are threatening the plaintiffs with criminal prosecution if they should fail to pay said tax and procure said license on or before October 1st, 1930, and threatening the issuance by him, the said W. L. Matthews, of warrants of distress, and procuring the issuance of warrants for the arrest of said plaintiffs for failure to procure the license in the manner aforesaid that the said W. L. Matthews threatens, in pursuance of the supposed authority conferred upon him, by warrants of distress, to

levy upon and seize the real and personal property of the plaintiffs, and that such levy and/or seizure, if made, will constitute and be a cloud upon the title of plaintiffs and each of them to their several properties which they are entitled, under the law, to hold and maintain free from all molestation and interference.

[fol. 19] VI

Plaintiffs state and allege that they are without remedy at law, and are, therefore, entitled to seek the aid of this, a court of equity, and for grounds of seeking such aid, they state the following, to-wit:

(1) That this court, by taking and assuming jurisdiction of this suit, will prevent a multiplicity of suits in this: that, unless the court does assume and take jurisdiction of this cause and issue the injunction hereinafter prayed, the plaintiffs and each of them, and all others for whom they sue herein, will be required to institute and prosecute at law approximately three hundred separate and individual suits as against the defendants herein and/or the officers of the State of Mississippi who may be sued for the return of such unlawful and illegal taxes. Plaintiffs, in this connection, allege that there are approximately three hundred cotton buyers in the Mississippi Delta upon whom has been imposed the necessity of paying the privilege or occupation tax aforesaid; that plaintiffs and each of them will be subjected to the issuance and levy of warrants of distress upon their real and personal property, as aforesaid, the institution and prosecution of indicidual suits as against them and each of them for the collection of the said taxes, damages, and penalties, as aforesaid, and the institution and prosecution of individual criminal pro-
[fol. 20] ceedings as against them and each of them for failure to pay said tax; that "The Board of Levee Commissioners for the Yazoo-Mississippi Delta", a body corporate and politic, existing under the Laws of the State of Mississippi, has, in pursuance of the supposed power and authority vested in it under and by virtue of the terms of said Chapter 56 of the Laws of 1930 and Chapter 80 of the Laws of 1902, imposed a like privilege tax for its use and benefit upon each of the plaintiffs herein, and that it will institute and prosecute, as against the plaintiffs

and each of them, individual and separate suits for the collection of the said taxes and penalties, and criminal prosecutions in accordance with the terms of the said statutes and the ordinances of the said "The Board of Levee Commissioners for the Yazoo-Mississippi Delta". The City of Clarksdale has likewise imposed upon the plaintiffs the necessity of paying a privilege tax equal to one-half the amount supposed to be due to the State of Mississippi as authorized by the said Chapter 88 of the Laws of 1930, and it will, unless relief is granted to the plaintiffs, as hereinafter prayed, institute like, separate, and individual suits as against the plaintiffs herein; and, therefore, plaintiffs show that this, their suit is one of equitable cognizance, and they are entitled to prosecute and maintain said suit in this, a court of equity.

Plaintiffs further allege that, in each and all of the said suits that may and will be prosecuted against them and [fol. 21] each of them, or must necessarily be prosecuted by them and each of them, and/or by or against all other buyers and shippers of cotton, comprising a class, as aforesaid, doing busines in the said Mississippi Delta as aforesaid, consisting of approximately three hundred buyers and shippers as aforesaid, the same facts as are presented to this court by this bill will be presented to and necessarily determined by such other courts as may have jurisdiction thereof, and the same principle of law, to-wit: the fact that the imposition of the privilege or occupation tax as aforesaid is as interference with and a burden upon interstate commerce, will likewise be presented to such other courts as may have jurisdiction of the many and multiplicious actions that may or will be brought about unless this court intervenes and adjudicates and determines the said question of law and of fact herein presented, which said question of law and of fact is the same identical one that will be solely involved in each and all of such actions as may be hereafter brought and prosecuted by or against the plaintiffs herein, and by or against the said cotton buyers and shippers constituting and composing a class as aforesaid. That is to say that, in each and all of the actions sought to be avoided herein, and which this court should and ought to avoid by its inter-[fol. 22] position and the exercise of its equitable power

hereinafter prayed, the same principal of law and the same state of facts will be involved, and this court may determine, in this single action, such identical facts and law to be involved in such other actions, and thereby avoid the manifold actions herein sought to be avoided.

The said plaintiffs and each of them charge and aver that the facts hereinabove alleged are equally applicable to each of the plaintiffs herein and each of the class represented by the plaintiffs herein, and that the principle of law hereinabove specifically set out has application to and will be determinative of the rights of each of the plaintiffs herein and each member of the class represented by the plaintiffs herein, and therefore, that the determination of the single state of facts hereinabove alleged and the determination of the legal principles hereinabove set forth as governing the said facts would apply equally to each of the several plaintiffs herein and each member of the class for which plaintiffs herein sue.

Said plaintiffs charge and aver that no fact or circumstance, right or custom, or principle of law exists which would or could be differently applied to the several rights of the plaintiffs herein so as, in any wise, to grant to either of the plaintiffs herein additional rights or remedies [fol. 23] not hereinabove specifically set forth other than those hereinabove asserted, set out, and averred.

(2) Plaintiffs further allege that they are without adequate remedy at law in the premises in that the State of Mississippi has provided no means whereby the plaintiffs may recover, in any event, all of the taxes which they may pay, whether under protest or not, and plaintiffs especially allege that, in the event they should pay the said taxes to the defendant Matthews, he, the said defendant, will deduct, from the amount paid by them, an amount equal to ten per cent of the tax as his commission, and that there is no remedy for the plaintiffs to recover the said amount of said commission or any part thereof.

Plaintiffs further allege that there is no law of the State of Mississippi which authorizes the re-payment to the plaintiffs, and no means whereby the plaintiffs may recover any damages that they may be required to pay, and which the defendants are now seeking to require them to pay; and,

therefore, plaintiffs allege, as aforesaid, that they are without full, adequate, or complete remedy at law.

(3) Plaintiffs further allege, by the terms and provisions of Section 304 of Hemmingway's Annotated Mississippi Code of 1927, that the State of Mississippi has created and enlarged the right and remedy in equity to restrain the enforcement and collection of the said taxes, and that such right and remedy plaintiffs are entitled to assert and maintain in this court.

[fol. 24] (4) Plaintiffs further allege that, unless relief is granted them in this court, as hereinafter prayed, they will suffer irreparable damage and injury in that the enforcement of the said unlawful and illegal statute of the State of Mississippi would seriously impair, if not destroy, the business of the plaintiffs, and plaintiffs allege that the suspension of their business for a period of thirty days would cause the loss to them and each of them of the connections which they have acquired in the said terminal markets, and that the damage occasioned by the loss of such connections and/or destruction of their said businesses would not be measurable in any court, and would exceed in amount, as to each of plaintiffs, $3,000.00, and no court is vested with jurisdiction or power to give or grant to the plaintiffs any such damages which they will so surely sustain. They especially allege that at and on the date of the filing of this bill, the prosecution of their business uninterruptedly is essential to the continued operation of their business inasmuch as their business as cotton buyers, buying through and for their several connections as above outline-, extends over a period as of September 1st, and continues to and through March 1st of each year, at a time when the producer of cotton in the Mississippi Delta is gathering, marketing, and offering the said cotton for sale in the manner and under the conditions as above outlined.

[fol. 25] (5) Plaintiffs further allege that they and each of them have contracts outstanding, made with their connections aforesaid and customers of many years standing, and that they are now deterred from buying the cotton necessary to perform the said contracts, and that the threats of the said defendants herein constitute clouds upon the right of the plaintiffs to continue the fulfil-ment of such con-

tracts, the said defendants insisting that the said plaintiffs have no right to continue in the business of fulfilling the said contracts by the purchase of cotton as aforesaid without first having obtained a license from the State of Mississippi so to do, and having first paid to the said State of Mississippi the said occupation tax demanded of them as aforesaid.

(6) Plaintiffs further allege that, if they and each of them should not be permitted to combine together in seeking the interposition of equity to enforce their several rights as hereinabove set out, neither of the said plaintiffs, separately, would be able to present its rights to the court for the reason that the amount of the tax as levied by Chapter 88 of the Laws of 1930 on behalf of the State of Mississippi amounts to the sum of One Hundred ($100.00) Dollars, and, if and in the event they should individually be required to pay said One Hundred ($100.00) Dollars into the Treas-
[fol. 26] ury of the State of Mississippi, and then institute a separate cause of action for the recovery of said sum, they severally would be compelled to institute their several causes of action therefor, and be required and compelled, in order to adequately present the questions as herein presented, to institute separate causes of action, employ an attorney therefor, and, being a cause of the nature as hereinabove alleged, to take the said cause to the highest state court of the state, and perhaps of the United States, and that the expense attendant to the presentation of the courts of the State of Mississippi or the United States would be prohibitive, and if successful, the plaintiffs could not and would not be indemnified, and, therefore, neither of the plaintiffs has an adequate remedy at law.

VII

Premises considered, plaintiffs pray as follows:

(a) That the application of the plaintiffs for the issuance of the temporary injunction hereinafter prayed be heard before a court organized and constituted in accordance with the provisions of Section 380 of Title 28 U. S. C. A.; that, at such hearing for such temporary injunction, and injunction issue out of this court enjoining and restraining the defend-
[fol. 27] ants or either of them from collecting or seeking

to collect from the plaintiffs the said privilege or occupation tax, and/or said damages as provided by Chapter 88 of the Laws of the State of Mississippi of 1930; and likewise enjoining and restraining the said defendants from prosecuting and undertaking to prosecute the plaintiffs or either of them for failure to pay said tax and/or said damages; and likewise enjoining and restraining the said defendant Matthews from issuing and/or levying warrants of distress as against the property of the said plaintiffs or either of them; and likewise enjoining the said defendants from interfering with or molesting the plaintiffs in any manner in the prosecution and enjoyment of the right to engage in their said business as aforesaid.

(b) Upon final hearing hereof, plaintiffs pray that it be adjudicated and determined that they have the right to engage in their said business free from the burdens placed thereon by said Chapter 88 of said Laws of 1930, and free from molestation or interference on the part of the said defendants herein and/or any other executive officer of the said State of Mississippi who are now charged with, or may hereafter be charged with the duty of enforcing the collection of the said privilege tax, damage, and/or the criminal provisions of said statute; and that the said Chapter 88 of said Laws of 1930 be declared invalid and unenforceable in so far as it undertakes to impose, upon plain-
[fol. 28] tiffs and all others for whom this suit is brought and prosecuted, the said privilege or occupation tax; and that the temporary injunction herein prayed be made perpetual as against the defendants herein and such other said officers of the State of Mississippi.

And, if plaintiffs have prayed for improper relief, they pray for such other, further, and more general relief as in equity may seem mete and proper.

As in duty bound, they will ever pray.

Edward W. Smith, Roberson & Cook, Sam C. Cook,
Solicitors for the Plaintiffs.

Duly sworn to by A. D. Metts. Jurat omitted in printing.

[fols. 29-32] [File endorsement omitted.]

[fol. 33] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER FOR TEMPORARY INJUNCTION—Filed Sept. 20, 1930

The application for the issuance of a temporary injunction prayed in the verified Bill of Complaint in the above styled cause having been this day presented to the undersigned Edwin R. Holmes, District Judge for the Southern District of Mississippi, and, upon opening and reading said verified Bill of Complaint, it appearing to the undersigned that the said application involves the issuance of an interlocutory injunction restraining the enforcement, operation, and execution of a statute of the State of Mississippi by the defendants named in said bill, and the said undersigned District Judge, having in pursuance of the directions and requirements of Section 380, Title 28, U. S. C. A., called to his assistance Honorable Rufus E. Foster, Judge of the Circuit Court of Appeals for the Fifth Circuit, and Honorable Allen Cox, District Judge of the Northern District of Mississippi; it is ordered that the said application be presented to and heard by the said Rufus E. Foster, Allen Cox, and the undersigned at New Orleans, Louisiana, at the court room of the United States Circuit Court of Appeals for the Fifth Circuit on September 27th, 1930, at 10 o'clock in the forenoon; and it is further ordered that the Clerk of [fols. 34-37] the District Court for the Northern District of Mississippi issue and deliver to the Marshal of the Northern and Southern Districts of Mississippi appropriate notice of such hearing, to be served upon the defendants in the above entitled cause, and Theodore G. Bilbo, Governor of the State of Mississippi, and George T. Mitchell, Attorney General of said State.

Ordered and adjudged on this September 20th, 1930.

E. R. Holmes, District Judge.

[File endorsement omitted.]

[fol. 38] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION TO DISMISS THE ORIGINAL BILL—Filed Sept. 29, 1930

To the Honorable Rufus E. Foster, Judge of the United States Circuit Court of Appeals for the Fifth Circuit; Honorable Allen Cox, Judge of the District Court of the United States for the Northern District of Mississippi, and Honorable Edwin R. Holmes, Judge of the District Court of the United States for the Southern District of Mississippi, convened as a special court at New Orleans, Louisiana:

Now comes Geo. T. Mitchell, Attorney General of the State of Mississippi, in his own behalf and in behalf of all defendants named in the original bill, and moves the Court to dismiss the original bill on file herein, and for grounds of said motion, assigns the following, to wit:

1. There is no equity on the face of the bill.

2. The complainant has a plain, adequate and speedy remedy at law.

[fols. 39-42] 3. Section 56, Chapter 88, Laws of 1930, does not contravene any provision in the Constitution of the United States.

4. A Federal Court of Equity is without jurisdiction to enjoin a sover-ign state or state officials from enforcing a state statute, which does not violate the Federal Constitution.

5. The amount in controversy is less than $3,000.00.

6. Under the facts stated in the original bill, the tax levied by Section 56, Chapter 88, Laws of 1930, does not place a burden on or regulate interstate commerce.

Respectfully submitted.

Geo. T. Mitchell, Attorney General, by J. A. Lauderdale, Assistant Attorney General, Attorneys for Defendants.

[File endorsement omitted.]

[fol. 43] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER FOR TEMPORARY INJUNCTION—Filed Nov. 8, 1930

This day this cause came on to be heard on the application for the issuance of the temporary injunction prayed in the original bill on file herein before R. E. Foster, Judge of the Circuit Court of Appeals for the Fifth Circuit, E. R. Holmes, and Allen Cox, District Judges of the Southern and Northern Districts of the State of Mississippi, respectively, and the said court having been convened in strict accordance with Section 266 of the Judicial Code, and notice having been given for more than five days to each of the defendants of the application for the temporary injunction prayed in the Bill of Complaint on file herein, and the said defendants having each and all entered their several appearances herein, and having interposed a Motion to Dismiss the Original Bill of Complaint, and the plaintiffs and defendants being present in open court and represented by counsel, and the court having heard and considered the said cause, and being of the opinion that the plaintiffs are entitled to the issuance of a temporary injunction as prayed in the Original Bill of Complaint and as applied for on this their hearing of the application for the issuance of the said temporary injunction; the court being of the opinion that the plaintiffs, on the face of the [fol. 44] Bill of Complaint, are engaged in interstate commerce, and that Chapter 88 of the Laws of 1930 of the State of Mississippi imposes a privilege tax for the privilege of engaging in said occupation, and requiring, as a condition precedent to engaging in said occupation of cotton buyer, that the license fee be paid, and, in default thereof, subjecting said plaintiffs to penalties, fines, and imprisonment, and, in addition thereto, exacts a civil penalty of double the amount of the tax; and the court being further of the opinion that, in so far as said Act undertakes to levy a privilege tax on the occupation of cotton buyer of the class of the plaintiffs as alleged in the Bill of Complaint, it contravenes the Commerce Clause of the Constitution of the United States, and is inoperative and void; it further appearing to the court that the defendants are the officers of the State of Mississippi charged with the enforcement both civilly and criminally, of the said Act,

and that they are threatening to subject the said plaintiffs to the penalties as provided in said statute; it further appearing to the court that the said tax was due and payable on September 1st, 1930, and that each of the said plaintiffs has refused to pay the said tax as being unconstitutional and inoperative as to them, and the defendants will, unless restrained by order of this court, enforce the provisions and penalties as provided in said Act, and it appearing [fol. 45] that the plaintiffs are without adequate remedy at law;

It is, therefore, ordered and adjudged that a temporary injunction forthwith issue by the Clerk of this court enjoining and restraining the defendants, W. L. Matthews, Sheriff of Coahoma County, Mississippi, and Ex-Officio Tax Collector for the State of Mississippi, and L. C. Franklin, Chairman, and H. H. Casteel and Webb Walley, Members, of the Board of State Tax Commissioners of the State of Mississippi, or either of them, from collecting or seeking to collect from the plaintiffs: J. F. Rodgers, A. C. Metts, C. W. Connell, W. C. Connell, H. J. Murff, S. W. Haaga, H. L. Turpin, E. P. Eskridge, Max Sansing, B. F. Oliver, Lamar Sellers, H. S. Moore, B. O. McGee, R. W. McGee, B. S. Milam, Fisher Cotton Company, a corporation, S. B. Wilson, and Cooper & Brush-Newberger Cotton Company, a corporation; and such other persons of the same class who may, by order of this court, intervene herein, and, by order of this court, obtain the benefit of such injunction, and none others whatever, the said privilege or occupation tax and/or damages as provided by said Chapter 88 of the Laws of the State of Mississippi of 1930; and likewise enjoining and restraining the said defendants from prosecuting and undertaking to prosecute said plaintiffs and/or such other persons hereinabove referred to for failure to pay said tax and/or said damages; and likewise [fol. 46] enjoining and restraining the said defendant Matthews from issuing and/or levying warrants of distress as against the property of the said plaintiffs and/or said other persons; and likewise enjoining the said defendants from interferring with or molesting the plaintiffs and/or said other persons in any manner in the prosecution and enjoyment of the right to engage in their business of cotton buyers and/or sellers, the said injunction to continue in force until the further orders of this court; and the said

plaintiffs and defendants having agreed upon the amount of the bond to be made upon the issuance of said temporary injunction, it is ordered that the said injunction issue upon the plaintiffs' making and filing with the Clerk of this court a bond, conditioned as required by law, in the penal sum of Three Thousand ($3,000.00) Dollars, which bond shall be approved by the said Clerk of this court.

All ordered and adjudged on this 7th day of Nov. 1930.

E. R. Holmes.

[File endorsement omitted.]

[fol. 47] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER—Filed Nov. 20, 1930

Now come all of the defendants in the above styled cause by Geo. T. Mitchell, Attorney General of the State of Mississippi, and for answer to the original bill now on file against them, say:

I

Defendants admit the allegations in Section I of said bill in reference to the names, citizenship and residence of the parties plaintiff and defendant.

II

Defendants admit the allegations contained in Section II of said bill, except defendants deny that the matter in controversy herein, exclusive of interest and cost, exceeds the value of $3,000.00, and deny that they are undertaking to deprive plaintiffs of the right to engage in interstate and foreign commerce, or to deprive plaintiffs of the right to earn their liv-lihood by engaging in interstate and foreign [fol. 48] commerce, and deny that jurisdiction is vested in this Court under and by virtue of the terms and provisions of Section 41 (1) of Title 28, U. S. C. A.

Defendants further deny that they have at any time attempted or threatened to deprive the plaintiffs herein of the right to engage in interstate and foreign commerce.

Defendants deny that they are undertaking to deprive the plaintiffs under the color of certain statutes of the State of Mississippi referred to in said bill the right to engage in interstate and foreign commerce, and deny that Section 41 (14) of Title 28, U. S. C. A., gives this Court jurisdiction of this cause of action.

III

Defendants admit the allegations in Section III of said bill.

IV

Defendants admit the allegations in Section IV of said bill, except as are herein specifically denied.

Defendants admit that at Clarksdale there exists and active market for the purchase and sale of cotton between farmers raising said cotton and plaintiffs, and others engaged in like business, but deny that said plaintiffs pur- [fol. 49] chase said cotton with the intention and purpose as alleged in said bill, of selling and transporting same in interstate and foreign commerce. They deny that it is, and was, and has been, a universal custom and course of business for more than twenty years past. Defendants allege that a large part of the cotton purchased by plaintiffs in the city of Clarksdale and other markets therein described is sold to local buyers and is not shipped out of the State by the purchaser and seller thereof.

Defendants admit the allegations in reference to the market price of cotton.

Defendants deny that all of said cotton is bought by plaintiffs with the uniform purpose and intention to transport same in interstate and foreign commerce to mills located in states other than the State of Mississippi, and in foreign countries, but say that said plaintiffs buy cotton from local residents of the State of Mississippi and sell cotton to local residents of the State of Mississippi, and that said cotton is not shipped out of or from the State by the plaintiffs who buy and sell said cotton in said manner.

Defendants admit the allegations in said bill in reference to the delivery of the cotton therein named to the compress or compresses at the city of Clarksdale, but deny that said [fol. 50] cotton, or any part of same is actually in the

channels of interstate commerce until said cotton is received by common carriers for shipment to other states.

Defendants admit that when the farmer or producer of the cotton carries it to the warehouse receipts are issued and delivered either directly to the producer or his agent, commonly called a cotton factor, and that these receipts are negotiable. Defendants, however, deny that there are approximately twenty-five buyers and shippers in the Clarksdale cotton market who are engaged in the sole business of buying, selling and shipping cotton in interstate and foreign commerce, but allege that said cotton buyers, and especially the plaintiffs herein, buy and sell cotton to other local dealers and cotton buyers.

Defendants deny that when plaintiffs herein purchase cotton on the Clarksdale market that it is uniformly known and understood by the farmer, cotton factor and the buyer that the buyer is purchasing said cotton solely for the purpose of causing the same to be transported by rail and/or water to certain points in the United States and foreign countries where mills convert said cotton into textile products, but allege that said cotton buyers, and especially plaintiffs herein, buy cotton from the farmer, cotton factor or other buyers, and sell same to other resident buyers in the city of Clarksdale and the State of Mississippi.

[fol. 51] Defendants deny that a very small portion of cotton purchased by shippers and cotton buyers (not exceeding ten per cent) was bought when no contract for the sale thereof existed as alleged in the bill, and would show that said buyers and shippers buy cotton when they have no contract and sell it again on the Clarksdale market, and that at the time they purchase same it is not bought with the sole anticipation and intention on the part of the buyer to procure a sale of said cotton to some foreign cotton mill, and cause the same to be transported in interstate or foreign commerce at such time as market conditions will justify, but allege that said buyers buy said cotton for the purpose of selling it again at a profit, and that when cotton is bought it is sold by the purchaser in large quantities to the other local buyers.

Defendants admit the allegations in the last paragraph of Section IV, but say, and would show to the Court, that on account of said buyers not having terminal markets in which to dispose of all of said cotton that they very often

dispose of large quantities and a large part of their business is selling cotton on the Clarksdale market.

Defendants further allege that there are numerous cotton buyers in the State of Mississippi who buy and sell cotton solely and wholly in intra-state commerce.

[fol. 52] Defendants admit that the business of each of the plaintiffs and the right of each of them to engage in such business is in excess of $3,000.00. Defendants would show, however, that the amount in controversy for each of said plaintiffs in this law suit is only $100.00, the amount of tax due by each of them.

V

Defendants admit the allegations in paragraph 1 of Section V, but say that said section has no application to any person, firm or corporation engaged solely and alone in interstate commerce, and that no officer of the state of Mississippi, and none of defendants named in said bill, undertake, attempt or threaten to enforce the provisions of said act when a person is engaged in interstate commerce alone. Defendants admit, however, that when a person is engaged in both interstate and intrastate business that said defendants do attempt to enforce the provisions of said act.

Defendants further allege that said plaintiffs are engaged in intra-state business and that said tax does not constitute a burden upon interstate commerce, and deny that said tax is an unlawful and unconstitutional burden on the rights of plaintiffs to engage in interstate and foreign commerce and to pursue their occupations as alleged in said bill, and deny that the several terms and provisions of said statute [fol. 53] aforesaid are repugnant to Article 1, Clause 3, Section 8 of the Constitution of the United States, commonly known as the Commerce Clause thereof.

Defendants admit that they, except for the injunction heretofore granted in this cause, would attempt to collect the tax levied by the statute of the State of Mississippi against the defendants, but would show that their reason for collecting said tax is based upon the fact that said plaintiffs, and each of them, are engaged in intra-state commerce and are liable for said tax.

VI

Defendants deny that plaintiffs are without remedy at law, and deny that they are entitled to seek the aid of a Federal Court of Equity.

(1) Defendants deny that by taking and assuming jurisdiction of this suit that this Court will prevent a multiplicity of suits, and they state that only one suit against each of said plaintiffs could be brought to determine their civil liability, and one each against plaintiffs to determine their criminal liability. However, defendants allege that until the principles of law are settled by the highest court of competent jurisdiction the said State officials would not attempt to harrass said plaintiffs by numerous suits in order to enforce the collection of said tax.

[fol. 54] Defendants deny that the facts hereinabove enumerated are equally applicable to each of plaintiffs herein, and each of the class represented by the plaintiffs herein, and that the principles of law set out in said allegation has application to and will be determinative of the rights of each of plaintiffs herein, and each member of the class represented by the plaintiffs herein, and allege that there may be certain cotton buyers in the State of Mississippi who do a very small intra-state business. There are others who do both intra-state and interstate business, and still others who do a large intra-state business and a very small interstate business, and still others who are engaged solely and alone in intra-state business. The liability of said plaintiffs and other cotton buyers in the State of Mississippi depends upon the question of fact to be determined in each case.

(2) Defendants deny that plaintiffs are without adequate remedy at law in the premises, and that the State of Mississippi has provided no means whereby the plaintiffs may recover taxes erroneously paid. Defendants allege that under the laws of the State of Mississippi the plaintiffs may pay the tax under protest and then sue the officer collecting same for recovery of the taxes, and that each and every officer charged with the duty of collecting taxes in the State of Mississippi, and especially defendants herein, [fol. 55] are required to give bond, and that said bond would be liable to the plaintiffs for any tax unlawfully

collected by the defendants. Defendants would further show that under and by virtue of the provisions of Chapter 196, Laws of 1926, Section 3276, Code of 1930, taxes erroneously paid by plaintiffs and others will be refunded to such tax payers even though same is not paid under protest.

(3) Defendants admit that by the terms and provisions of Section 304, Hemingway's Code of 1927, Section 420, Code of 1930, the State of Mississippi has created and enlarged the right and remedy in equity to restrain the enforcement and collection of said taxes, but deny that plaintiffs are entitled to assert and maintain such right in this Court, because the jurisdiction in this case is not based upon diversity of citizenship.

(4) Defendants deny that the enforcement of the statute herein as against plaintiffs would cause them to suffer irreparable damage and injury to their business, but allege that said plaintiffs are engaged in intra-state commerce and are liable for said tax, and by paying the small tax of $100.00 they would escape all injury and damages alleged in said paragraphs (4) and (5).

(6) Defendants admit that the plaintiffs, and each of [fol. 56] them, should not be permitted to combine together in seeking the interposition of equity to enforce their several rights as set out in the allegations of the bill, and that neither of said plaintiffs separately would be able to present its rights to the Court for the reason that the amount of tax as levied by Chapter 88, Laws of 1930, on behalf of the State of Mississippi amounts to the sum of $100.00, and defendants allege that said plaintiffs cannot combine their right of action for jurisdictional purposes. Defendants admit that unless said plaintiffs avail in this Court, then in order to adequately present the questions of law involved in this case, it would be necessary to file a suit and take said cause to the highest Court of the State, and perhaps to the United States Supreme Court. However, defendants allege that the expense of litigation in one case would not confer jurisdiction on this Court.

VII

Defendants allege that the farmers or producers of cotton ship the cotton after it has been ginned to the compress

at Clarksdale for the purpose of storing it until they desire to sell it, and for the purpose of placing it there in order that sales and transfers of said cotton may be made by delivery of the compress receipt. Small quantities of this cotton are shipped out soon after being placed in the compress. [fols. 57-64] Large quantities are store- in the compress for months and sometimes for years before it is sold by the producer. Other large quantities are kept in the compress after it is sold by the producer before it is sold for export or transportation to another state. Large quantities of said cotton are bought and sold by plaintiffs herein before it is shipped away. The situs of said cotton is in the State of Mississippi and it does not enter or become a part of interstate commerce until it is actually received by the common carriers for transportation outside the State.

VIII

Defendants now having fully answered the allegations of the original bill on file herein, pray that said temporary injunction heretofore granted by this Court be dissolved, the original bill dismissed, and plaintiffs taxed with all costs in this behalf expended.

Geo. T. Mitchell, Attorney General, by J. A. Lauderdale, Assistant Attorney General, Attorney for Defendants.

[File endorsement omitted.]

[fol. 65] IN UNITED STATES DISTRICT COURT

[Title omitted]

AGREED STATEMENT OF EVIDENCE—Filed Jan. 16, 1931

It is hereby stipulated and agreed by and between the undersigned counsel representing all of the plaintiffs and all of the defendants, respectively, in the above entitled cause as follows, to-wit:

I

The report hereto attached, addressed to said undersigned counsel and signed by Joseph F. Ellis, certified

public accountant, shall be and constitute the evidence before the court upon which said cause shall be finally determined on its merits. The matters and things stated in said report relative to the business of H. J. Murff & Company and B. F. Oliver & Company are equally applicable to the average business of each of the plaintiffs herein, and it is agreed that the course of the business of each of the plaintiffs herein is identical with the averages reflected by the said report.

H

Except for the conclusions of law which are denied by [fol. 66] the answer filed herein, all of the facts stated in the said Bill of Complaint are specifically admitted, except as the said report of the said Joseph F. Ellis should evidence the contrary.

This the 10 day of Jan., 1931.

George T. Mitchell, Attorney General of the State of Mississippi, by J. A. Lauderdale, Assistant Attorney General, Attorney for all Defendants. Edward W. Smith, Roberson & Cook, Sam C. Cook, Attorneys for Plaintiffs.

Messrs. Cutrer & Smith, Clarksdale, Miss.; Messrs. Roberson & Cook, Clarksdale, Miss.; Hon. J. A. Lauderdale, Assistant Attorney General, Jackson, Miss.

GENTLEMEN:

In re Cotton Buyers and Operations

Agreeing to your joing request I am pleased to report that I have made an examination of the books and accounts [fol. 67] of H. J. Murff & Company, Clarksdale, Mississippi, and B. F. Oliver & Company, Clarksdale, Mississippi, for the purpose of determining the extent and manner in which these firms engaged in the interstate shipment of cotton, and also to determine the general manner in which their businesses are and have been conducted.

H. J. Murff & Company are known as "Cotton Buyers and Shippers", (as distinguished from factors and local brokers and "scalpers") and have been in this business in Clarksdale for many years and are considered as a most

representative firm. They also conduct one or more branch offices. During the fiscal year ending August 31, 1930, the period under review, they maintained two branch offices—at Cleveland and Greenwood, Mississippi, and the transactions through those offices are included and reflected in the figures herein submitted.

During the fiscal year ending August 31, 1930, they purchased and sold a total of 15,173 bales of staple cotton, of which 14,895 bales was shipped.

All of this cotton was bought in the delta of Mississippi and was stored in compresses located at various places all [fol. 68] over the Delta, from Hollandale north to Clarksdale, from the time it was purchased under the date shipped.

This cotton was bought for the purpose of filling orders of cotton mills and brokers, and was shipped in the months and to the destinations shown below:

	N. Ca.	S. Ca.	Con.	Rd. I.	Mass.	N. H.	Tenn.	Ver.	La.	Eng.	Hol.	Miss.	Total
Sep.	702	150	100	150	50	..	..	..	..	350	..	3	1,505
Oct.	1,171	210	40	212	500	..	..	..	..	420	..	5	2,558
Nov.	633	346	..	149	550	25	..	..	..	600	..	12	2,315
Dec.	410	253	100	..	350	..	28	..	..	400	..	5	1,546
Jan.	1,060	100	..	57	341	25	153	..	..	900	100	27	2,763
Feb.	295	100	..	100	250	..	157	..	..	50	..	23	975
Mch.	636	100	..	4	25	..	121	100	..	150	..	33	1,159
Apr.	756	..	..	41	29	..	112	..	..	..	..	30	968
May	269	..	..	..	177	..	8	..	2	..	..	1	457
June	99	..	..	..	148	..	134	..	..	..	..	39	420
July	43	9	..	..	118	..	2	..	..	..	..	50	222
Aug.	11	..	..	..	214	..	..	..	..	..	..	60	285
Totals	6,085	1,268	240	713	2,752	50	715	100	2	2,870	100	*278	15,173

*Includes 42 bales unidentified cotton.

The total sale price of this 15,173 bales of cotton was $1,874,004.85, of $213.509 per bale.

Therefore, the division of this business as between inter- [fol. 69] state, foreign, and intrastate, applying a uniform average bale price of $123.509, as above, is as follows:

	Bales	Value
Interstate:		
North Carolina	6,085	751,552.20
South Carolina	1,268	156,609.40
Connecticut	240	29,732.16
Rhode Island	713	88,061.92
Massachusetts	2,752	339,896.77
New Hampshire	50	6,175.45
Tennessee	715	88,308.94
Vermont	100	12,350.90
Louisiana	2	247.01
Total	11,925	1,472,934.75
Foreign:		
England	2,870 B/C	354,483.70
Holland	100	12,350.90
Total	2,970 B/C	366,734.60
Total Interstate and Foreign	14,895 B/C	1,839,669.35
Intrastate:		
Mississippi	278 B/C	34,335.50
Total all cotton	15,173 B/C	1,874,004.85

A distribution on a basis of percentage, as between the several classes of business is as follows:

Interstate	79.09%
Foreign	19.07%
Intrastate	1.84%

[fol. 70] All of the above cotton, (with the exception of that sold in Mississippi; and part of that sold in Tennessee) was sold on orders, against which this cotton was purchased.

The purchases were of a particular grade and staple, as determined from an examination of every individual bale.

As indicative of the large number of classifications in which staple cotton is graded and classed there is copied below the standard "key" to classes, as used by the Staple Cotton Co-operative Association of Greenwood, Mississippi, and which is now generally accepted as a standard of classification for cotton throughout the Delta. This cotton, it will be observed, is classed for grade, staple, color, and preparation as follows:

"For Grade

A is Strict Good Middling.
B is Good Middling.
C is Strict Middling.
D is Middling.
E is Strict Low Middling.
F is Low Middling.
G is Strict Good Ordinary.
H is Good Ordinary.
I is Ordinary.
J is Inferior—or "Dogs".

For Staple

1 is 7/8 inch.

[fol. 71] 2 is 1 inch.
3 is 1 to 1 1/16 inch.
4 " 1 1/16 inch.
5 " 1 1/16 to 1 1/8 inch.
6 " 1 1/8 inch.
7 " 1 1/8 to 1 3/16 inch.
8 " 1 3/16 inch.
9 " 1 3/16 to 1 1/4 inch.
10 " 1 1/4 inch.
11 " 1 1/4 to 1 5/16 inch.
12 " 1 5/16 inch.
13 " 1 5/16 to 1 3/8 inch.
14 " 1 3/8 inch.

For color	For preparation
O is White.	A is Excellent.
1 is Wax.	B is Good.
2 is Vim.	C is Fair.
3 is Blue.	D is Gin-Cut.
4 is Spotted.	
5 is Strained.	
9 is Extra White	

To decode D 06 9 C: D denotes middling grade; 06 denotes 1-1/8 inch staple; the 9 denotes extra white color; C denotes fair preparation.

[fol. 72] Middling Was 1-1/4 inch staple Fair preparation would be shown in code as D 10 1 C.

Unless otherwise noted the preparation is B or Good."

Therefore it will be seen that multiplying these ten classes as to grade, fourteen as to staple, seven as to color and four as to preparation gives a total of 3920 possible variations in classifications of staple cotton as recognized by the Association's charts, and by the majority of the cotton trade. Of course some of these classes may not appear on the market, but actually, I am advised, the Association did have over three hundred different active pools last year, each pool representing a distinct class of cotton. In other words, their members' cotton was put in over 300 different groups for staple, grade, color, or preparation, and each of these different groups or pools of cotton was tenderable only on orders calling for that particular class of cotton.

The purpose of this explanation is to show the origin of what is known as "overs".

Orders taken by Murff & Company would call for so many bales of cotton of a particular kind and while cotton bought for purpose of delivering on an order might be up as to grade or staple, it might be a shade off in color [fol. 73] or poor in preparation which, if there were no orders it would "fit", would have to be disposed of.

It would not be practicable to show the date of purchase of the cotton delivered on any particular contract as it is all commingled. Sometimes the cotton is bought and delivered immediately. Again Murff would have orders for delivery late in the season of high-grade cotton

not ordinarily easily obtainable except it is bought early in the season. In such case the cotton of necessity would be bought early and carried in the compress until delivery date.

In order to indicate the extent to which this is necessary, I show below, still referring to Murff & Company's business, the purchases month by month, during this season:

Sept.	4,751
Oct.	5,408
Nov.	1,647
Dec.	2,310
Jan.	212
Feb.	563
Mch.	249
Apr.	181
May	85
June	104
July	33
Aug.	22
Total	15,577

[fol. 74] The difference in the number of bales bought, to-wit: 15,532, as compared with sales of 15,173 bales, is accounted for by the small inventories on hand at beginning and end of the season, as follows:

Inventory Aug. 31, 1929	35	Bales
*Purchases	15,532	"
Total	15,567	"
*Inventory Aug. 31, 1930	394	"
Sold	15,173	"

In order that the stock on hand at the end of each month may be ascertained, I show below, in tabulated form, the accumulated total of purchases and accumulated total of shipments as well as orders on hand unfilled as to the end of each month.

*These items are less rejections.

	Orders to dates shown	Purchases to dates shown	Shipments on orders	Unfilled orders to dates shown	Cotton on hand at dates shown
1929.					
Sept. 1	7,800	35	.....	7,800	35
Oct. 1	11,920	4,759	1,505	10,415	3,254
Nov. 1	13,607	10,159	4,063	9,544	6,096
Dec. 1	13,894	11,806	6,378	7,516	5,428
1930.					
Jan. 1	13,994	14,116	7,924	6,070	6,192
Feb. 1	14,219	14,728	10,687	3,532	4,041
Mch. 1	14,718	14,881	11,662	3,056	3,219
[fol. 75]					
Apr. 1	14,847	15,120	12,821	2,026	2,299
May 1	14,972	15,201	13,789	1,183	1,412
June 1	15,471	15,286	14,246	1,225	1,040
July 1	15,521	15,390	14,666	855	624
Aug. 1	15,521	15,390	14,888	633	502
Aug. 31	15,595	15,577	15,173	422	394

As to the ultimate destination of the 278 bales shown above as "overs", I cannot definitely state. However, from an examination of the books, it appears that it was disposed of as follows:

To other buyers and shippers	31 B/c
To local scalpers and speculative buyers	194 B/C
To pickeries for reclaimation	3 B/C
Rejections	8 B/C
Unidentified	42 B/C
	278 B/C

B. F. Oliver & Company

We also examined the books of B. F. Oliver & Company, Clarksdale, Mississippi, for the part of their fiscal year beginning with September 1, 1930, and ending December 15, 1930.

This firm is also engaged in the business of buying and selling of cotton, maintaining an office at Clarksdale Mis-
[fol. 76] sissippi.

Because of the smaller volume of their business and the fact that their records did not permit, and the further fact that the general features of their business are identical with Murff & Company, a complete analysis of their operations as in the case of Murff & Company is not shown.

They have handled, to date, a total of 1630 bales, which was sold and shipped to destinations as shown below:

Interstate:	
Massachusetts	496 B/C
North Carolina	213
South Carolina	100
Alabama	198
Total	1,007 B/C
Foreign:	
England	457 B/C
Total interstate & foreign	1,464 B/C
Intrastate:	
Mississippi	166 B/C
Total all cotton	1,630 B/C

The total sale price of this cotton was $114,626.49 or $70.323 per bale.

The apportionment of this firm's business, therefore, on a dollars and cents basis is as follows:

Interstate	$70,815.26
[fol. 77] Foreign	32,137.61
Intrastate	11,673.62
Total	$114,626.49

and are a basis of percentages as follows:

Interstate	61.74%
Foreign	27.85%
Intrastate	10.41%

The larger percentage of intrastate sales of this firm, as compared with Murff & Company, I would say is due to several causes, principally among which are:

(1) The small volume of business affords them a narrower "apread" for their purchases. Having fewer orders to fill, there is less variety of cotton to be bought and consequently more likelihood of their having "misfit" bales left over.

(2) In dealing in low price cotton, which has prevailed all this year, it is customary to find the preparation poorer.

(3) Greater difficulty in financing purchases and sales has made it advisable and necessary to "dump" locally small lots of cotton that otherwise would have ordinarily been carried for possible future sales.

These and other factors as well have made it advisable to dispose of a greater part of the purchases locally, which [fol. 78] would otherwise have probably been held for application on orders for future delivery.

An analysis of orders, sales and shipments of this firm is as follows:

	Orders to date shown	Purchases to date shown	Shipments on orders	Unfilled orders to date shown	Cotton on hand at date shown
Sep. 1	350	....	....	350	....
Oct. 1	700	395	200	500	195
Nov. 1	1,351	1,010	905	446	105
Dec. 1	1,576	1,528	1,311	265	217
Dec. 20	1,654	1,684	1,630	454	54

As to the physical handling and movement of this cotton, purchased by these buyers, the procedure is as follows:

This cotton is bought by them, either at the gins, or after it reaches the compresses. Very little cotton is bought at the gin as the buyers prefer to wait until the cotton has been placed in a compress or warehouse and sampled, and the purchase made on the seller's sample, subject to rejection if not up. Then on the purchase of the cotton, title is possessed with the transfer of the warehouse receipts. [fol. 79] After the buyers have acquired the cotton, it is

usually allowed to remain in the warehouse where it is until time to ship. Immediately after the cotton is bought, it is then resampled and, as a rule, another and more strict classification made, when the cotton is blocked out for shipment immediately, or some later date, on orders calling for that particular staple and grade. Particular bales are rejected on the seller for replacement or redemption or adjustment.

In these purchases, as stated hereinbefore, some bales may be of a different grade, color or staple and not suitable for shipment on orders, then had. This cotton is frequently sold to other local buyers, at a possible loss, and it is this cotton which constitutes the "overs", the 278 bales in the case of Murff and the 165 bales with B. F. Oliver & Company.

As stated above the resale of this cotton frequently is an unprofitable transaction and it is the desire of every buyer to make his purchases coincide as nearly as possible to the orders in hand—hence the small amount of local or intrastate cotton.

As stated before, the cotton handled by these buyers is stored in the compress nearest (as a rule) to the point of ginning. Shipments against any one order are not necessarily concentrated in one press. A buyer having an order for a certain number of bales of cotton of a particular class will fill that order from whatever compress or compresses [fol. 80] he may have cotton of that class then stored.

In order that some idea may be had of the way in which cotton is concentrated in the compresses and the time it is held before being shipped, there is set forth below as determined from the records of the Federal Compress & Warehouse Company, Clarksdale, Mississippi, a table showing the total receipts and shipments for each month, accumulated total of receipts and shipments to the end of each month, and the stock of cotton on hand as at the end of each month for the period of seventeen months, beginning August 1, 1929 and ending December 31, 1930:

Fiscal Year Ending July 31, 1930

	Receipts for month	Total receipts to date shown	Shipments for *for* month	Total shipments to date shown	Stock on hand at date shown
July 31	....	....	....	....	4,187
Aug. 31	3,502	3,502	1,531	1,531	6,158
Sep. 30	56,103	59,605	11,985	13,415	40,377
Oct. 31	66,036	125,641	34,898	48,313	81,515
Nov. 30	26,321	151,962	37,944	86,257	69,892
Dec. 31	17,124	169,086	22,683	108,940	64,333
Jan. 31	9,393	178,479	33,835	142,775	39,891
Feb. 28	7,475	185,954	11,867	154,642	35,499
Mch. 31	3,757	189,711	7,797	162,439	31,459
Apr. 30	1,639	191,350	6,846	169,385	26,152
May 31	992	192,242	6,784	176,179	20,250
[fol. 81]					
June 30	593	192,835	2,531	179,710	17,312
July 31	186	193,021	2,483	182,193	15,015

Period August 1 to December 31, 1930

	Receipts for month	Total receipts to date shown	Shipments for *for* month	Total shipments to date shown	Stock on hand at date shown
July 31	....	....	....	....	15,015
Aug. 31	1,474	1,474	1,979	1,979	14,510
Sep. 30	23,865	25,339	3,161	5,140	35,214
Oct. 31	47,529	72,868	16,110	21,250	66,633
Nov. 30	23,413	96,281	15,285	37,535	73,761
Dec. 31	9,657	105,938	13,204	50,739	70,214

These figures clearly demonstrate that the cotton is largely put into storage during the months of September to January inclusive, but that the withdrawals are more gradual—as the mills and exporters have need for the cotton, it is shipped out to them.

For instance, to December 31, at the present year, there has been stored at Clarksdale, 105,938 bales of cotton, but there has been shipped to this date only 50,739 bales, leaving on hand 70,214 bales.

This balance of 70,214 bales will not likely all be shipped even by September 1, 1931, there always being a small volume on hand when the new crop starts to come in.

[fol. 82] It is further stated that the ownership of the 70,214 bales of cotton, now in this press, is varied—some of the cotton is still owned by the original producers; some is owned by scalpers and speculative buyers; some by the buyers who are shippers; some by brokers, and some by mills or consumers awaiting their call. As to when it will move, that depends altogether on the future requirements of the businesses of the many and varied owners of the cotton.

Cotton is sometimes, though rarely, allowed to remain in a compress for years. Again it is shipped to a press and immediately reshipped on some order.

The purpose and sole purpose of a compress and storage plant is to provide a conveniently located concentration depot, close to rail or water transportation where the cotton may be safely stored under bond, protected and insured against fire loss and other hazards, until such time as it is to be shipped to some point of consumption of export, and then compressed for shipment.

The extent to which this is true is shown by the following excerpt from Table 21, Dept. of Commerce Bulletin #167, "Cotton Production and Distribution Season of 1929-1930", which shows the monthly consumption of cotton, the amount held in mills awaiting manufacture and the amount still in public storage and at compresses:

[fol. 83]

	Monthly consumption	In storage at mills	In storage at compress & warehouses
"August, 1929	558,754	808,989	1,382,226
September	545,834	790,772	3,208,546
October	639,759	1,355,998	5,296,077
November	541,153	1,655,071	5,812,658
December	452,685	1,841,079	5,898,596
January, 1930	576,160	1,825,793	5,404,761
February	494,396	1,806,040	4,858,243
March	507,646	1,758,171	4,198,077
April	531,911	1,662,215	3,637,046
May	473,284	1,527,853	3,379,414
June	405,236	1,356,664	3,105,226
July	379,022	1,183,007	2,877,422"
Average	508,820	1,465,138	4,088,191

from which it will be observed that the mills carried an average of less than three month's supply of cotton at their establishments which at September 1929, fell to six weeks supply; whereas there was an average of eight month's supply in public storage throughout the entire period, and at some times as much as eleven month's supply.

Trusting that the foregoing constitutes the information desired, it is,

Respectfully submitted.

Jos. F. Ellis, Certified Public Accountant.

Clarksdale, Mississippi, December 31, 1930.

[fols. 84-135] [File endorsement omitted.]

[fol. 136] In United States District Court

[Title omitted]

Order Joining Parties Plaintiff—Filed Feb. 24, 1931

In this cause, it appearing to the Court, by consent of all parties, that the hereinafter named Cotton Buyers, being members of the same class as the plaintiffs named in the original bill of complaint herein, may be parties hereto, it is therefore, accordingly,

Ordered, adjudged and decreed that Humphrey & Company, Incorporated, a Corporation, J. C. Lore & Company, Incorporated, a Corporation, W. G. Humphrey, doing business individually and Stanley Henshaw Company, be and they are hereby made parties to this cause, as parties plaintiffs herein, with all of the rights and privileges as if originally named in the original Bill of Complaint herein process heretofore or herea-ter issued or proceedings herein done shall, as to the said named Cotton Buyers, be effective as if the said parties were original parties plaintiffs herein.

Ordered, adjudged and decreed by consent of the plaintiffs and defendants herein on this the 21st day of February, [fol. 137] A. D. 1931.

E. R. Holmes, Judge, etc.

O. K.

Geo. T. Mitchell, by Forrest B. Jackson, Assistant Attorney General.

O. K.

E. W. Smith, of Counsel for Plaintiffs.

[File endorsement omitted.]

[fol. 138] In United States District Court

[Title omitted]

Final Decree—Filed Feb. 24, 1931

This cause, by consent and upon a written stipulation as to the facts, came on to be further heard in the City of New Orleans, Parish of Orleans, State of Louisiana, before the Hon. Rufus E. Foster, Circuit Judge for the Fifth Circuit Court of Appeals; Hon. Edwin R. Holmes, United States District Judge in and for the Southern District of Mississippi, sitting by designation in and for the Northern Dstrict of Mississippi; Hon. Wayne G. Borah, United States District Judge in and for the Eastern District of Louisiana, a Court composed in accordance with the Revised Statutes, Section 718, and was argued by Counsel; and therefore, upon consideration thereof, it was ordered, [fol. 139] adjudged and decreed as follows:

That the preliminary injunction heretofore issued herein on the 29th day of November 1930 be and the same is hereby perpetuated, and Section 56 of Chapter 88 of the Laws of the State of Mississippi of 1930 be and the same is hereby declared inapplicable to interstate business and inapplicable insofar as the same undertakes to levy a privilege tax on the Plaintiffs herein, whom the Court finds to be engaged solely in interstate business, and further finds that to construe said statute as applicable to an interstate busi-

ness, such as the plaintiffs are engaged in would be in violation of the Constitution of the United States, and a burden on interstate commerce.

The Court finds the following facts, to-wit:

I

Plaintiffs are, and have been, engaged in the business of what is commonly known as cotton buyers and shippers. The Plaintiffs are all actively engaged in purchasing, selling, and shipping cotton upon the market for cotton, as hereinafter set forth, which is now and has been for many years in the past maintained in the City of Clarksdale, Miss. They are likewise engaged in buying, selling, and shipping cotton upon the other markets maintained in the Mississippi Delta, hereinafter mentioned and described, at Greenwood, Mississippi, Cleveland, Mississippi, Indianola, [fol. 140] Mississippi, Greenville, Mississippi, Yazoo City, Mississippi, Belzon, Mississippi, and Vicksburg, Mississippi; and plaintiffs business under the conditions hereinafter stated as apertaining particularly to the cotton market maintained in Clarksdale, Mississippi, likewise appertaining, in all essential features, to the other markets herein mentioned, and conditions described herein with reference to the said market at Clarksdale, Mississippi, are illustrative of the general condition in the cotton business of all of said markets.

II

The Mississippi Delta, an alluvial body of land located within the confines of the State of Mississippi, comprises about six thousand six hundred fifty square miles; it is bounded on the north by the northern boundary of the state, and extends along the western boundary of said state, in a southerly direction, for approximately one hundred ninety miles, the western boundary thereof being the Mississippi River. Its width varies from a few yards to approximately fifty miles. The said Mississippi Delta was formed by the acton of the Mississippi River in overflowing the same, and gradually building it up to a height at which it became susceptible of cultivation. The character of the soil in said Mississippi Delta makes it peculiarly adaptable

to the growing of what is commonly known as Delta-type, [fol. 141] long staple cotton, which is a cotton, and a peculiar type of cotton, recognized throughout the world in the cotton trade as being of a superior type, character, and strength.

Clarksdale, Mississippi, is located in the heart of said Mississippi Delta about seventy miles south of the northern boundary line of said State, and about fifteen miles east of the Mississippi River. The said Mississippi Delta is exclusively an agricultural community, and its principal crop is that of said long staple cotton. It produces annually a crop of approximately seven hundred thousand bales, and said cotton is the only product which is raised by the agriculturalists located in said Mississippi Delta, and which is sold upon the open market, and is the source from which is produced the cash revenue out of which practically the entire populace of said Mississippi Delta derives its livelihood.

The said cotton, when it ripens in the field, is picked by hand, put through a ginnery, by the process of which machine the lint is removed from the seed, and the lint cotton (in which plaintiffs deal exclusively as hereinafter shown) is wrapped and tied into bales weighing approximately five hundred pounds each. A bale of cotton, when wrapped and tied at the gin, is approximately five feet in length, three and one-half feet in width, and four and one-fourth feet in height.

[fol. 142] By general and uniform custom, bales of cotton from the gin are transported by rail or otherwise, as hereinafter described, to compresses. A compress is a combination storage warehouse and plant equipped with machinery designed to press bales of cotton, under extremely high pressure, for the purpose of reducing its size. A bale, after compression, is only about eighteen inches thick, the purpose of compression being that the railroads and carriers by water in interstate and foreign commerce, as hereinafter described, are enabled to load into cars and ships, for such carriage, approximately three times as much cotton after compression as otherwise would be possible. Approximately twenty-five percent of the cotton which is bought and sold upon said market in Clarksdale, and is transported to the compresses by automobile, truck, or wagon, and delivered by that means to said compresses.

Approximately seventy-five per cent of said cotton is transported to said compresses by rail over the lines of the Yazoo & Mississippi Valley Railroad Company, a common carrier engaged in interstate commerce, and which is the only such common carrier doing business at said market.

At Clarksdale, there are two compresses owned and operated by a corporation existing under the Laws of the State of Delaware, to-wit: The Federal Compress & Warehouse Company. Said Federal Compress and Warehouse Company has, with reference — both and each of said compresses maintained at Clarksdale, complied with all the [fol. 143] terms and provisions of an act of Congress, the short title of which is the "United States Warehouse Act", being Chapter 10, Title 7, U. S. C. A. The said Federal Compress and Warehouse Company complied with the terms and provisions of the said "United States Warehouse Act" for the reason that all of said cotton stored in the said compresses and/or warehouses at Clarksdale, Mississippi, and handled in the manner above described was and is cotton stored and handled therein for interstate and/or foreign commerce, and the power of Congress to affect, by provisions of its said act, the said cotton so handled and stored arises only from the fact, that said cotton and all of it is stored and handled for interstate and foreign commerce, and Congress, in exercising the power granted it by said Article 1, Section 3, of the Constitution of the United States, over the said cotton, has thereby reserved to itself exclusive jurisdiction, power, and control thereof, and divested the State of Mississippi of any power, if any it might have had, to control and/or regulate the buying, selling and/or shipping of said cotton.

When cotton is delivered to said compresses, the said Federal Compress & Warehouse Company issues to the owner thereof warehouse receipts, which receipts comply in all things with the terms and provisions of said Act of Congress. Said cotton is universally sold upon the market [fol. 144] by transfer and delivery of said warehouse receipts in accordance with the terms of said Act of Congress, and actual samples taken from said bales of cotton; said warehouse receipts being the evidence of the ownership of such cotton.

At Clarksdale, there exists an active market for the purchase and sale of cotton between farmers raising said cot-

ton and plaintiffs and others engaged in like business, who are purchasing the same with the intention and purpose of selling and transporting same in interstate and foreign commerce, which is and was and has been a universal custom and course of business for more than twenty years past. The price at which said cotton is sold upon said market at Clarksdale, however, is determined by the value of such cotton upon certain cotton exchanges maintained, respectively, in the Cities of New Orleans, Louisiana, Chicago, Illinois, and New York, New York; and there are maintained, in the City of Clarksdale, Mississippi, offices of brokers who receive daily by wire, for periods of approximately five hours each day, continuous quotations from such exchanges which fix and determine the price at which cotton is sold upon said Clarksdale market. All of said cotton, however, is bought, by plaintiffs with the uniform purpose and intention, except the "overs" hereinafter mentioned, (which is and has been the universal course of business) to trans- [fol. 145] port the same in interstate and foreign commerce to the mills located in the states upon the Atlantic seaboard, to-wit: Georgia, South Carolina, North Carolina, and Tennessee; and the mills of the New England States, to-wit: Massachusetts, Rhode Island, and Connecticut; and the mills of foreign countries. None of said cotton is spun or utilized within the confines of the State of Mississippi, or sold to or purchased by any consumer within the confines of the State of Mississippi.

Approximately seventy-five per cent of said cotton is delivered by rail to said compresses at Clarksdale, and upon the delivery of such cotton to the said carrier by rail at points outlying said City of Clarksdale, said cotton thereupon is placed in and thereafter remains in the channels of interstate commerce. The said carrier transports by rail the said cotton to the said compress at Clarksdale, and it is there concentrated merely for the purpose of compression and for the purpose of awaiting the determination of its final point of destination outside the State of Mississippi. When the destination of such cotton is determined, the said carrier loads the same out on instructions of the then owner, after having the said cotton compressed, and charges the through freight-rate from the point of origin to the point of destination outside of the State of Mississippi, instead of charging the combined rate for carriage in intrastate com-

merce from the point of origin to Clarksdale, plus the charge for carriage in interstate commerce from Clarksdale to the [fol. 146] point of destination. As for instance: the rate for the carriage in intrastate commerce from Sumner, Mississippi, to Clarksdale, Mississippi, a distance of approximately twenty miles, of an uncompressed bale of cotton is $1.28 per hundred pounds. The through rate for the carriage of a compressed bale of cotton from Clarksdale, Mississippi, to Fall River, Massachusetts, is $1.28 per hundred pounds. The said carrier, instead of charging the combined rate above outlined for carriage from Sumner, Mississippi, to Fall River, Massachusetts, charges the through-rate, which is the intermediate rate, as if there had been no interruption of shipment from Sumner, Mississippi, to Fall River, Massachusetts. The said charges are made by said carriers in accordance with the regulations prescribed by the Interstate Commerce Commission in pursuance of the act of Congress creating said commission and the several amendments thereto.

The general and uniform custom and course of business in handling said cotton upon said market is had and done in the following manner:

The farmer causes warehouse receipts, when the cotton is delivered to the compress, to be issued and delivered either directly to himself or his agent, commonly called a cotton factor. Upon the Clarksdale market, there are approximately twenty-five buyers and shippers who are engaged in the sole business of buying, selling, and shipping cotton in interstate and foreign commerce. The farmer or [fol. 147] the factor causes the actual bales of cotton to be sampled, and the cotton is sold to the plaintiffs and other buyers, sellers, and shippers upon said market, upon the basis disclosed by the character of the samples of said cotton, and by endorsement and delivery of the said cotton receipts evidencing the ownership of the same, the price therefor being governed, by the markets in New York, Chicago and New Orleans. It is uniformly known and understood by the farmer, cotton factor, and the buyer that the buyer is purchasing said cotton solely for the purpose of causing the same to be transported by rail and/or water to said points in the United States and foreign countries where mills convert said cotton into textile products as aforesaid. No cotton that is bought and/or sold upon the

Clarksdale market is utilized in the State of Mississippi, but all of said cotton, as aforesaid, is transported for consumption in interstate and foreign commerce.

The general and uniform custom among buyers, shipper, and sellers, as well as the general course of business is that a buyer enters into a contract for either the future or immediate delivery of a certain number of bales of cotton of a certain class, grade, and staple, obligating himself by such contract to deliver to a mill in a foreign state or country such cotton at a given price. Thereupon, such buyer will [fol. 148] go upon the said market at Clarksdale, and purchase cotton of the kind and character which he is obligated to his customer to deliver, and will cause the delivery of said cotton in interstate and/or foreign commerce in accordance with the terms of his contract. A very small proportion of the cotton purchased by shippers, and cotton buyers (not exceeding ten per cent) is bought when no contract for the sale thereof exists as hereinabove alleged, but, in such cases, it is bought with the sole anticipation and intention on the part of the buyer (which intention is fully known both to the buyer, farmer, and/or factor) to procure a sale of said cotton to some foreign cotton mill or foreign cotton merchant, and to cause the same to be transported in interstate and/or foreign commerce, as aforesaid, at such time as market conditions will justify. Plaintiffs have engaged in the business of buying and selling cotton in the manner aforesaid upon the markets hereinabove described for periods ranging from five to more than twenty years. The business of plaintiffs is commonly known as that either of a cotton buyer, cotton shipper, or words of like import.

In the purchase of cotton by the plaintiffs as above set forth a small proportion of the cotton was purchased varying from one percent to ten percent constituting what is known in the cotton trade as "overs or cotton which does not fit" said overs arising from reclassification, rejections [fol. 149] and preparation. As an incident to the purchase and shipment of this cotton by the plaintiffs to its customers situated in foreign states and countries, the plaintiffs sell locally this small percentage of cotton for which they have no use, but which said latter cotton is eventually shipped out of the State of Mississippi by other cotton buy-

ers of the same class as plaintiffs for delivery on orders which they may have for cotton of this particular grade, type or staple. Other and additional facts are shown by a stipulation entered into by the parties and filed herein.

Under the above and foregoing facts plaintiffs are engaged in interstate commerce, and the State of Mississippi being unauthorized to levy a privilege tax on the privilege of engaging in said business, notwithstanding by its duly constituted officers is threatening and undertaking to burden and regulate interstate commerce in contravention of the Commerce Clause of the Constitution of the United States, and therefore the said Act, as its officers are construing and attempting to enforce the same insofar as it undertakes to exact a privilege license from the plaintiffs so engaged in the business aforesaid, is unconstitutional and void.

The costs are hereby taxed against the Defendants.

[fol. 150] Ordered, adjudged and decreed on this the 21st day of February, 1931.

Rufus E. Foster, Circuit Judge. E. R. Holmes, District Judge.. Wayne G. Borah, District Judge.

[File endorsement omitted.]

[fol. 151] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL—Filed March 13, 1931

To the Honorable Rufus E. Foster, Circuit Judge; Wayne G. Borah and Edwin R. Holmes, District Judges, composing said Court:

Now come W. L. Matthews, Sheriff and Ex Officio Tax Collector of Coahoma County, Mississippi, Lester C. Franklin, H. H. Casteel and Webb Walley, composing the State Tax Commission of Mississippi, defendants in the above styled and numbered cause, and conceiving themselves aggrieved by the order made and entered by the above named Court in the above entitled cause, on the 21st, day of February, 1931, wherein among other things, said

Court, composed of Judge Rufus E. Foster, Circuit Judge, Judge Wayne G. Borah and Judge Edwin R. Holmes, District Judges, under Section 266 of the United States Judicial Code, and Section 380, Title 28, United States Code, granted the plaintiff's application for a permanent injunction in said cause, do hereby appeal to the Supreme Court of the United States from said final order and [fol. 152] decree, and especially that portion of it granting the plaintiffs' application for a permanent injunction, all of which reasons are set forth in the assignment of errors which is filed herewith.

Defendants further show unto the Court that the above entitled cause is a suit against the State of Mississippi and its officers, agents and employees, and that, therefore, under the law, no bond is required for an appeal by the State from said final order and decree. In view of the fact that defendants will sustain irreparable harm and damage by reason of said Court granting plaintiffs' application for said permanent injunction in said cause, these defendants pray that this their petition for appeal may be allowed.

Defendants further pray that a transcript of record proceedings and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States, at Washington, D. C.

Dated this the 28th day of February, A. D., 1931.

Geo. T. Mitchell, Attorney General, by J. A. Lauderdale, Assistant Attorney General, Attorney for Defendants.

[File endorsement omitted.]

[fol. 153] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING APPEAL—Filed March 20, 1931

This day this cause came on to be heard on the application of the defendants in the above entitled cause for an appeal to the Supreme Court of the United States from the final decree rendered in this cause, by three Judges, grant-

ing the plaintiffs' application for a permanent injunction on the 21st day of February, 1931.

It is ordered, adjudged and decreed that said appeal be and is hereby allowed, and, it appearing to the Court that this suit is a suit against the State of Mississippi, it is ordered, adjudged and decreed that pending the appeal from the said decree in said cause to the Supreme Court of the United States, an appeal bond shall not be, and is not hereby required.

Ordered, adjudged and decreed, this the 28th day of February, 1931.

Rufus E. Foster, Circuit Judge. E. R. Holmes, Wayne G. Borah, District Judges.

[fol. 154] [File endorsement omitted.]

[fol. 155] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENTS OF ERROR—Filed March 13, 1931

Now come defendants in the above styled cause by George T. Mitchell, Attorney General of the State of Mississippi, and file the following Assignments of Error upon which they will rely on their appeal from the decree made by this court on the 21st day of February, 1931, in the above styled cause:

1. The court erred in overruling the motion to dismiss the original bill for the following reasons, to-wit:

(a) The court was without jurisdiction because there is no equity on the face of the bill.

(b) The court was without jurisdiction because complainants have a plain, ad-quate and speedy remedy at law.

(c) The court was without jurisdiction because the amount in controversy is less than $3,000.00.

(d) The court was without jurisdiction because Section 56, Chapter 88, Laws of 1930 does not contravene any pro-

[fols. 156-159] vision in the Constitution of the United States.

(e) Because the court was without jurisdiction to enjoin a sover-ign state or state officials from enforcing a state statute which does not violate the Federal Constitution.

2. The court erred in granting a preliminary injunction for the same reasons that it erred in overruling the motion to dismiss the bill.

3. The court erred in granting a permanent injunction on the final hearing of said cause:

(a) Because Section 56, Chapter 88, Laws of 1930 does not contravene any provision in the Constitution of the United States.

(b) Because under the facts of this case plaintiffs are not engaged exclusively in interstate commerce.

Respectfully submitted.
Geo. T. Mitchell, Attorney General, by J. A. Lauderdale, Assistant Attorney General, Attorney for Defendants.

[File endorsement omitted.]

[fol. 160] IN THE SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON

I

The court erred in overruling the motion to dismiss the original bill for the following reasons, to-wit:

(1) The court was without jurisdiction because there is no equity on the face of the bill.

(2) The court was without jurisdiction because complainants have a plain, adequate and speedy remedy at law.

(3) The court was without jurisdiction because the amount in controversy is less than $3,000.00.

(4) The court was without jurisdiction because Section 56, Chapter 88, Laws of 1930 does not contravene any provision in the Constitution of the United States.

[fol. 161] (5) Because the court was without jurisdiction to enjoin a sovereign state or state officials from enforcing a state statute which does not violate the Federal Constitution.

II

The court erred in granting a preliminary injunction for the same reasons that it erred in overruling the motion to dismiss the bill.

III

The court erred in granting a permanent injunction on the final hearing of said cause:

(1) Because Section 56, Chapter 88, Laws of 1930 does not contravene any provision in the Constitution of the United States.

(2) Because under the facts of this case appellees are not engaged exclusively in interstate commerce.

Respectfully submitted.
J. A. Lauderdale, Assistant Attorney General, Attorney for Appellants.

[fols. 162 & 163] IN THE SUPREME COURT OF THE UNITED STATES

PRÆCIPE FOR TRANSCRIPT OF THE RECORD

1. Original bill of Complainants with exhibits thereto.
2. Order granting temporary injunction.
3. Motion to dismiss the original bill.
4. Order overruling the motion and granting temporary injunction.
5. Opinion of the court written by Judge Holmes on the application for issuance of temporary injunction and directing the entry of the order granting such application.
6. Answer of defendants.

7. Agreed statement of fact.
8. Order joining Humphreys and Company, et al., as plaintiffs.
9. Decree of the court granting permanent injunction.
10. Petition for appeal by defendant.
11. Assignments of error by defendants.
12. Order or decree of Honorable Rufus E. Foster, Circuit Judge, Honorable E. R. Holmes and Honorable Wayne G. Borah, District Judges, granting the appeal.

Geo. T. Mitchell, Attorney General; J. A. Lauderdale, Assistant Attorney General, Attorneys for Appellants. Edward W. Smith, J. L. Roberson, & Sam C. Cook, Attorneys for Appellees.

Endorsed on cover: File No. 35,889. N. Mississippi D. C. U. S. Term No. 84. W. L. Mathews et al., appellants, vs. J. F. Rodgers et al. Filed May 15, 1931. File No. 35,889.